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231258Z Mar 04

C O N F I D E N T I A L SECTION 01 OF 02 KUWAIT 000948

SIPDIS

STATE FOR NEA/ARP

E.O. 12958: DECL: 03/14/2014

TAGS: PGOV KU

SUBJECT: (U) CLARIFYING PARLIAMENT'S CONSTITUTIONAL RIGHT  
TO GRILL

Classified By: (U) CDA Frank Urbancic; Reason 1.4 (d).

¶11. (SBU) SUMMARY: The Kuwaiti Constitutional Court agreed in mid-March to hear legal arguments in April from National Assembly lawyers in defense of parliament's right to question Cabinet Ministers. Earlier, the GOK questioned the constitutionality of parliament's current interpretation of Article 99 of the Kuwaiti Constitution\*the right of National Assembly members to question Cabinet ministers. The constitutional parameters on grilling are vague and the GOK is hoping that the courts can define limitations on specific National Assembly grilling actions to stem the tide of future interpellations. Any decision narrowing the parameters of acceptable grilling practices would favor the GOK but would also represent an uncommon occurrence of judicial review from Kuwait's Constitutional Court. END SUMMARY.

¶12. (SBU) Mohammed Dhaifallah Sharar, Deputy Prime Minister, Minister of State for Cabinet Affairs, and Minister of State for National Assembly Affairs, submitted in February the GOK request for an examination of the constitutionality of the grilling against Finance Minister Mahmoud Al-Nouri. Now, lawyers for the National Assembly will be given a chance to defend their position before the Constitutional Court on April 17. In its petition, the GOK requested that the Court spell out the limitations of queries that may properly be submitted to Ministers and the Prime Minister. The petition also requests the court clarify whether a Minister or a Prime Minister is required to submit data, documents or secret information to parliament. The petition further requests an explanation on whether a Prime Minister must answer queries on all ministries or is permitted to only answer questions on the public policy of the state.

¶13. (U) Only the GOK, the National Assembly, or the courts can bring a case before the Constitutional Court. Article four of the law establishing the Constitutional Court states that disputes shall be raised to the Constitutional Court either through a request from the National Assembly or the Council of Ministers. Additionally, a court can request a constitutional review if it finds during consideration of a case that the decision necessitates defining the constitutionality of a law or decree. This process of judicial review to rule on the constitutionality of a law is rarely employed.

(U) What The Constitution Says

¶14. (SBU) The Kuwait Constitution is noticeably vague with regard to the parameters by which the National Assembly must abide when grilling Ministers. Article 99 of the Constitution reads "Every member of the National Assembly may put to the Prime Minister and to Ministers questions with a view to clarifying matters falling within their competence. The questioner alone shall have the right to comment once upon the answer." Article 100 goes on to clarify that parliament may grill any Minister "with regard to matters falling within their (the Minister,s) competence." The question is whether "matters of competence" pertains only to the actions the individual Minister took while serving in his current office or also includes any actions he took on behalf of the GOK prior to becoming a Minister, as well as actions taken by the Ministry before his tenure.

(SBU) PM Can Be Grilled But Not Voted Out

¶15. (SBU) After a grilling, a Minister can face a vote of no-confidence; to pass, that vote requires a simple majority of members excluding Ministers--i.e. currently 25 of 49 MPs. The Prime Minister, who can be grilled according to Article 100, is the only Minister exempt from a no-confidence vote. Article 102 of the constitution states that the Prime Minister &shall not hold any portfolio; nor shall the question of confidence in him be raised before the National Assembly."

¶16. (SBU) Parliament, according to Article 102, is permitted to submit a complaint to the head of state regarding its inability to cooperate with a Prime Minister. In response, the Amir can choose to relieve the Prime Minister of office

and appoint a new Cabinet, or dissolve the National Assembly. If he chooses the latter course and the new Assembly decides it cannot cooperate with the PM, "he shall be considered to have resigned."

17. (C) COMMENT: Sharar's request to the Constitutional Court appeared at first to be something of a stall tactic to halt the grilling campaign against Al-Nouri. That grilling went ahead on March 8, which led to a vote of no-confidence on March 22 that Al-Nouri survived (septel). If the Court ruling supports constitutional limitations on the interpellation process, it could take the steam out of the current grilling campaign. On the other hand, if the Al-Nouri grilling is found to be constitutionally sound, parliament will have been given the green light to question any minister on anything he has done in his life regardless of its link to the execution of his ministerial duties.

18. (C) COMMENT CONTINUED: Many constitutional articles are open to great interpretative discretion by the executive and legislative branches and are rarely subjected to constitutional challenge. (NOTE: e.g. Article 29 of the constitution holds that "all people are equal in public rights and duties before the law, without distinction as to race, origin, language, or religion," but this is consistently and noticeably violated in Kuwait.).

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